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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, CAL CHAPTER, *Petitioner*

v.

CONTINENTAL AIR LINES, INC. AND THE AIR LINE PILOTS ASSOCIATION INTERNATIONAL, AFL-CIO, *Respondents*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENT CONTINENTAL AIR LINES, INC. IN OPPOSITION

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FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, CAL CHAPTER, *Petitioner*

v.

CONTINENTAL AIR LINES, INC. AND THE AIR LINE PILOTS ASSOCIATION INTERNATIONAL, AFL-CIO, *Respondents*

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Opinion Below

The opinion of the court of appeals (Pet. App. A, 21-30) is reported at 297 F.2d 397.

Jurisdiction

The jurisdictional requisites are adequately set forth in the petition.

Question Presented

Whether the court below correctly held that a case becomes moot where a labor organization (petitioner CAL Chapter) brings suit for a declaratory judgment and injunctive relief, asserting violations of the Railway Labor

Act, against an airline employer (respondent Continental) and another labor organization (respondent ALPA), and, pending appeal from an order of the district court denying the preliminary injunction, (a) the striking members of CAL Chapter, during an economic strike, contact respondent ALPA and together formulate a tentative strike settlement agreement to be presented to Continental by ALPA on behalf of the strikers, (b) the strikers then dissolve CAL Chapter, (c) ALPA on behalf of the strikers concludes the strike settlement agreement with Continental, (d) under the settlement agreement fifteen of the strikers are reemployed as pilots and the remaining seven elect, are paid, and accept severance pay in the amount of $10,000 each, and (e) Continental does not violate the Railway Labor Act and the above described events are therefore not attributable to any violation of that Act by Continental.

Statute Involved

The pertinent provisions of the Railway Labor Act, as amended, are set forth in the petition (Pet. App. B, 32-34).

Statement

The facts asserted in the petition differ widely from the facts found and stated in the opinion of the court below.[1] Respondent Continental believes that the petitioner, CAL Chapter, is asking this court to grant certiorari to correct alleged errors in fact finding by the court below. It is therefore deemed advisable to set forth herein a full statement of the case and the real question presented to this Court in this case.

CAL Chapter seeks a review by this Court of the opinion and judgment of the court below dismissing the appeal and ordering dismissal of the case because it became moot pending appeal from the district court to the court of appeals (Pet. App. A, 21-31). The opinion and judgment were entered on motions to dismiss for mootness filed by Continental and ALPA in the court below. These motions were

[1] The findings of fact of the court below relate solely to the question of mootness. The court made its findings from the affidavits of record (Pet. App. A, 23) and carefully avoided making any finding with respect to disputed factual matters (Pet. App. A, 23, 24, 25).

supported by affidavits with documentary exhibits attached and memoranda of points and authorities. CAL Chapter opposed these motions by affidavits with attached exhibits and memoranda of points and authorities.[2] In ruling on the motions the court below stated its findings on factual matters as well as its legal conclusions (Pet. App. A, 21-30).

CAL Chapter, as sole plaintiff, filed this suit June 1, 1960, against Continental and ALPA, seeking a declaratory judgment and injunctive relief (R. 3-15; Pet. App. A, 21-22).[3] The district court denied CAL Chapter's motion for preliminary injunction by order entered July 11, 1960 (R. 299-305). CAL Chapter appealed that order to the Court of Appeals for the Ninth Circuit.

During the pendency of the appeal and on June 21, 1961, Continental and ALPA filed motions to dismiss the appeal and the case as moot (Pet. App. A, 22). Although several grounds were advanced for granting the motions, the grounds asserted included those upon which the court below granted the motions. These grounds are set forth in the opinion below as follows:

> "(1) CAL Chapter, the sole plaintiff and appellant, is no longer in existence; (2) the dispute involved in the lawsuit has been settled; and (3) CAL Chapter represents no present employees of Continental and any former employees whom it purports to represent have accepted termination pay and are now estopped to claim a right of employment." (Pet. App. A, 23)

CAL Chapter was recognized as the union representing flight engineers employed by Continental when this suit was filed; however there was no collective bargaining agreement then in effect, the prior agreement having expired May 1, 1960 (Pet. App. A, 23). In a prior case in which Continental and CAL Chapter were opposing parties, the district court held that Continental and CAL Chapter had bargained fully, that the processes of the Railway Labor Act had been ex-

[2]The motion papers, exhibits and affidavits of all parties below are part of the record certified to this Court.

[3]"R." refers to the Transcript of Record in the court of appeals.

hausted, that no further waiting periods were required under that Act, and that both parties were free to take economic action (R. 462-475; 299-305). CAL Chapter was free to strike and Continental was free to put into effect the changes it had proposed regarding the crew complement on its jet aircraft. The decision in the prior case was entered May 18, 1960, was and is final and was never appealed (R. 301-304). The record in the prior case is included in the certified record before this Court. The prior case will be referred to herein as case 518-60, its docket number in the district court (R. 311 et seq.).

Continental took economic action on or about May 28, 1960, implementing its proposed changes in the flight crew complement of its jet aircraft (R. 301). On June 30, 1960, CAL Chapter took its economic action in protest against these changes. On that date CAL Chapter called and commenced a strike of flight engineers against Continental (Pet. App. A, 23).

The complete membership of CAL Chapter, twenty-two flight engineers, participated in the strike (Pet. App. A, 23). During the course of the strike Continental kept operating and replaced the strikers (Pet. App. A, 23; see also affidavit of Bell supporting Continental's motion to dismiss below). They were not just fired outright as the petition seems to suggest (Pet. 5) but were replaced, as found by the court below (Pet. App. A, 23). Next, on August 27, 1960, Continental notified CAL Chapter and the National Mediation Board that it no longer recognized that union as the bargaining agent for any Continental employees (Pet. App. A, 23; Exhibit 2 to affidavit of Bell).

The strike continued and some of the strikers began negotiating with respondent ALPA, the union representing Continental's pilots (Pet. App. A, 23). The court below found:

> "While the strike was in progress several of the striking flight engineers entered into negotiations with representatives of ALPA regarding ways and means of ending the strike and merging the flight

engineers into ALPA, which union would then represent all Continental flight deck crew members." (Pet. App. A, 23)

The negotiations between the strikers and ALPA resulted in a tentative agreement; then the striking flight engineers dissolved CAL Chapter, the sole plaintiff herein (Pet. App. A, 24). There is some argument about one proxy vote at the union dissolution meeting (Pet. App. A, 24), but again as found by the court below, the undisputed facts are that 100% of the strikers signed option forms reciting that they were "signators" to the strike settlement agreement of October 10, 1960 (Pet. App. A, 24-26). That agreement confirmed the dissolution of CAL Chapter and all of the strikers accepted the benefits of that agreement, either returning to work as pilots or electing and accepting $10,000 severance pay (Pet. App. A, 26). Those who elected severance play did so on the advice of the CAL Chapter attorneys (affidavit of Iverson supporting CAL Chapter's opposition to motions to dismiss below, p. 7.).

Only after the strikers had authorized ALPA to represent them and they had formulated a tentative strike settlement agreement, *inter se*, after CAL Chapter was dissolved and after all strikers selected the options provided for in the tentative settlement agreement, did ALPA present the proposed strike settlement agreement to Continental (Pet. App. A, 23-25). At that time ALPA represented Continental's pilots and the strikers. On the strength of that, the agreement and the signed options, Continental executed the agreement at ALPA's request to settle the strike. (See last five numbered pages, Exhibit 10 to affidavit of Bell supporting Continental's motion to dismiss below).

In addition to dissolving their union the former flight engineers directed their attorneys to dismiss this case, they notified the Flight Engineers International Association, AFL-CIO, (herein "International") of the action taken, and they appointed trustees of CAL Chapter to dispose of assets and pay bills (Pet. App. A, 25). Pursuant to the settlement agreement of October 10, 1960, fifteen former

flight engineers elected to return to work for Continental as pilots, and each of the remaining seven chose, were paid, and accepted $10,000 severance pay (Pet. App. A, 25). Included in the fifteen strikers who were re-employed as pilots was M. L. Kenyon, the former flight engineer whose proxy vote on the dissolution motion was the subject of some dispute in the court below (Paragraph 4, affidavit of Berry supporting Continental's reply to CAL Chapter's opposition to motions to dismiss below). The affidavits in support of the Continental and ALPA motions to dismiss together with exhibits attached thereto, such as the strike settlement agreement of October 10, 1960, the signed option selection forms and the minutes of the dissolution meeting of CAL Chapter, show, and the court below found (Pet. App. A, 27-30), that the minutes on their face appear to show proper and lawful dissolution, but even if the Kenyon proxy is questioned, 100% of the membership of CAL Chapter ratified and confirmed the dissolution (Pet. App. A, 29-30).

The court below also found:

> "ALPA and Continental subsequently entered into collective bargaining negotiations which resulted in a new collective bargaining agreement between them dated February 28, 1961. This agreement, which will remain in effect until August 31, 1962, covers all of Continental's flight deck crew members. The ALPA-Continental agreement of May 29, 1959, has expired and is no longer in effect." (Pet. App. A, 26)

The International attempted to impose a trusteeship on CAL Chapter after CAL Chapter had been dissolved. The constitution and by-laws of International were reviewed by the court below and it found no provisions therein relating to establishment of a trusteeship over a subordinate body (Pet. App. A, 26-27). Furthermore the constitution and by-laws of the International provide for autonomous local chapters (Exhibit 4, page 3 to affidavit of Berry supporting Continental's motion to dismiss below). The only requirement in the International constitution and by-laws concerning dissolution of local chapters is that no chapter be dis-

banded as long as a majority favor continuance (Pet. App. A, 29; Exhibit 4 to affidavit of Berry supporting Continental's motion to dismiss). Here it is undisputed that more than a majority favored dissolution (Pet. App. A, 29). CAL Chapter's constitution and by-laws require a two-thirds vote on dissolution. The minutes show such a vote (Pet. App. A, 24). The strike settlement agreement and signed option forms show unanimous ratification on or before October 10, 1960, of the dissolution vote on October 7, 1960 (Pet. App. A, 25).

The International has never been and is not now a party to this litigation, and has never represented any Continental employees (affidavit of Bell supporting Continental's motion to dismiss below; cf., Pet. App. A, 23). The facts found by the court below set forth fully the basis for its conclusion that CAL Chapter no longer exists, that the dispute has been settled, that CAL Chapter represents no employees of Continental and that any former employees it purports to represent have accepted termination pay and are now estopped to claim a right of employment (Pet. App. A, 23-30).

Petitioner filed a petition for rehearing[4] which was denied by the court below on December 7, 1961 (Pet. App. A, 31).

In case 518-60, the prior case between CAL Chapter and Continental, CAL Chapter asserted the same alleged violations of the Railway Labor Act as it did in the instant case and the district court ruled adversely to CAL Chapter on those issues (R. 461-475; 299-305). That decision is final and was never appealed. In the instant case the district court denied CAL Chapter's motion for preliminary injunction on the ground that, by the principle of collateral estop-

[4]Respondent Continental has caused said petition for rehearing to be certified as part of the record in this Court. As may be seen by reference to that document, the same arguments relied upon by the petitioner herein were made by it to the court below, which necessarily rejected them, since it had already found the operative facts to be insufficient to support petitioner's arguments.

pel by prior action, CAL Chapter was estopped from asserting the same alleged violations of the Railway Labor Act (R. 299-305).

ARGUMENT

I. The Decision Below is Clearly Correct and There is No Conflict of Decision.

In making its decision the court below had before it a wealth of factual material. Continental's motion to dismiss was supported by affidavits of Harrold W. Bell, Jr., Roy A. Berry, and Don R. Wilson. ALPA's motion is supported by an affidavit of Berry. Wilson is Continental's Vice President, Flight, Bell is Continental's Vice President, Personnel Relations, and Berry is a Continental pilot, formerly a flight engineer, who participated in the strike. Many documents were attached to the affidavits as exhibits. These included the strike settlement agreement of October 10, 1960, the option forms provided for in said agreement signed by all of the strikers, the minutes of the meeting of CAL Chapter at which that union was dissolved, the CAL Chapter constitution and by-laws, and the constitution and by-laws of International. CAL Chapter's opposition to the motions also included affidavits and exhibits. The record in the court below also included a transcript of record setting forth the district court proceedings in the instant case and in case 518-60.

The facts leading up to the final settlement of the dispute are carefully traced in the opinion of the court below (Pet. App. A, 23-30) and are summarized above in the Statement. The court below took great pains to avoid resolving disputed factual questions on the basis of the affidavits of record and based its decision solely on facts about which (it found) there was no dispute (Pet. App. A, 23, 24, 25).

The motivation for the strikers turning to ALPA and abandoning their own union is clear. By August 27, 1960, all of the strikers had been replaced (Pet. App. A, 23). Continental operated all of its flights after August 1, 1960. Prior to that date the strike caused only a small interruption of

flight operations.[5] The strike was a failure. Three of the striking flight engineers on and after September 13, 1960, started negotiations with ALPA to work out a merger of their group into ALPA (Pet. App. A, 23). According to the affidavit of Berry supporting ALPA's motion to dismiss (pp. 3-4), he and other flight engineers were reopening earlier merger talks between flight engineers and pilots. According to Berry's affidavit such a merger had been carefully investigated and almost consummated about May 15-18, 1959. So the talks were nothing new. The flight engineers had been involved in an unsuccessful strike for about two and one-half months. They reopened negotiations for merger, and representation by ALPA and by that method got ALPA to settle the strike and the overall dispute. The strike was abandoned not later than October 7, 1960, and ALPA brought the settlement agreement to Continental on October 10, 1960 (Pet. App. A, 23-24). Berry's affidavit makes clear, as the court below found (Pet. App. A, 23-25), that there was no bargaining between Continental and any of the strikers. CAL Chapter's claim of individual bargaining thus falls in the realm of utter fantasy. No evidence of such activity appears in its motion papers. Also, Berry's affidavits supporting the Continental and ALPA motions display the utter lack of any causal connection between any activity of Continental and the flight engineers' abandonment of their own union and merging into ALPA.

CAL Chapter was never certified by the National Mediation Board (Pet. 2, Note 2). It had been voluntarily recognized by Continental, but it lost its representative status during the course of the strike. Its membership abandoned it to get ALPA to settle the strike, and it was dissolved by its membership. This is clear from the findings of fact of the court below; the operative facts incident to these occurrences, as found below, completely fail to support CAL Chapter's allegations that they were the product of violations of the Railway Labor Act on the part of Continental (Pet. App. A, 23-26).

[5] See affidavit of Bell supporting Continental's motion to dismiss in the court below.

The court below also had before it the district court records in case 518-60 (R. 311 *et seq.*) and in the instant case (R. 3 *et seq.*). Those records show that CAL Chapter asserted the identical alleged violations of the Railway Labor Act in both cases. Those records also show the rulings adverse to CAL Chapter on these issues in the prior case, the fact that that decision is final and was not appealed, and that CAL Chapter could not litigate the same issues all over again in the instant case (See, R. 299-305).

Mere assertions by CAL Chapter, no matter how often repeated, cannot change the facts on which the court below based its decision that the case is moot. CAL Chapter claims violation of the Railway Labor Act by Continental in direct conflict with the record below. CAL Chapter claims that it has not been allowed to litigate the merits of the case, apparently ignoring the final decision in case 518-60 showing full bargaining and freedom on the part of both parties to take economic action. CAL Chapter seems to claim that Continental simply fired the strikers outright, ignoring the evidence and finding of the court below that they were replaced. CAL Chapter claims that Continental bargained with individual strikers, completely disregarding the clear finding of the court below that the course of events leading up to the strike settlement agreement involved negotiations between the strikers and ALPA. As a result of these negotiations, ALPA became the representative of the strikers, as well as Continental's pilots, and it then consummated the settlement agreement with Continental on behalf of the strikers.

Thus the foundation of petitioner's case on certiorari melts away. Its arguments are based on facts that did not and do not exist. Indeed the authorities agree that a case becomes moot where, as here, without coercion, the plaintiff has ceased to exist, the dispute has been settled, and the plaintiff (even if it had not ceased to exist) has no interest in the case or such an ephemeral interest that it lacks

standing to continue to maintain the lawsuit.[6] Furthermore the authorities support the decision of the court below that International has no standing to perpetuate the case.[7] For purposes of the petition for certiorari petitioner does not "place in issue the merits of the decision of the court below" on the questions of the dissolution of CAL Chapter and the purported trusteeship (Pet. 6, note 7). [The court below decided that the dissolution of CAL Chapter was legal and effective and that the attempted trusteeship was invalid and ineffective (Pet. App. A, 28-30).] *That decision must therefore be accepted as true on these points.* Hence there simply are no adverse parties remaining in the case. International is not a party and has no right or standing to maintain litigation on behalf of a non-existent entity.[8]

Petitioner, in an attempt to avoid the clear import of these decisions, cites cases relating to survival of actions in which

[6] *Little v. Bowers*, 134 U.S. 547 (1890); *Singer Mfg. Co. v. Wright*, 141 U.S. 696 (1891); *California v. San Pablo & Tulare R. Co.*, 149 U.S. 308 (1893); *Mills v. Green*, 159 U.S. 651 (1895); *Brownlow v. Schwartz*, 261 U.S. 216 (1923); *Barker Painting Co. v. Local No. 714 Brotherhood of Painters, etc.*, 281 U.S. 462 (1930); *Lord v. Veazie*, 8 How. 251 (U.S. 1849).

[7] See cases cited note 8, *infra*.

[8] If petitioner does not challenge the finding below with respect to the invalidity of the attempted trusteeship, petitioner admits it lacks standing to prosecute this appeal, since it is apparent on the record that petitioner here is the International Union acting through the purported trustees of CAL Chapter. See, Pet. App. A, 27, 30. Even assuming, *arguendo*, that this case involved matters of public interest, a private party (International) without any interest in the subject matter of the litigation has no standing to raise the issue. See, *Boston Tow Boat Co. v. U. S.*, 321, U.S. 632 (1944). In that case the Tow Boat company intervened in a proceeding before the Interstate Commerce Commission involving another carrier. It sought to appeal from a decision adverse to the other carrier; however the right was denied as it had no standing to prosecute the appeal. The order in question was not determinative of the status of the Tow Boat company. See also, *Fishgold v. Sullivan Dry Dock & Repair Corp.*, 328 U.S. 275 (1946), where this Court indicated that a union would not have standing to challenge the decision in a case involving *another* union and an employer. Compare, *United Public Workers v. Mitchell*, 330 U.S. 75 (1947) and *Muskrat v. U. S.*, 219 U.S. 346 (1911) (private party without standing to challenge general validity of federal law); *Virginian Ry. Co. v. System Federation No. 40*, 300 U.S. 515, 558 (1937) (employer has no standing to raise constitutional rights of his employees).

the United States or its agencies, such as the NLRB, are actually parties to the litigation, the remedies sought or obtained by the Government or the agency are either prospective in effect or perpetual, and are based on specific findings of unfair labor practices or other violations of law by an agency or a court. None of those elements are present here and those cases have no bearing on the real question now before this Court. Rather this case presents only the orthodox attributes of a moot litigation and it is well settled that whenever a case becomes moot, a Federal court loses jurisdiction and must dismiss the case.[9]

Thus in *Barker Painting Co. v. Local No. 734 Brotherhood of Painters, Decorators and Paperhangers*, 281 U.S. 462 (1930) this Court refused to review an appeal from the judgment of the circuit court affirming the trial court's order dismissing a suit to enjoin two unions from calling a strike where, pending the appeal, all of the employees involved had returned to work and the job over which the dispute arose had been completed. This Court there stated:

> "Both sides desire that the Court should go further afield. But a Court does all that its duty compels when it confines itself to the controversy before it. It cannot be required to go into general propositions or prophetic statements of how it is likely to act upon other possible or even probable issues that have not yet arisen [citation omitted]. The controversy here was between the plaintiff and the painters in Somerville who prevented its finishing its job. If the case had needed to be considered on its merits, it would have been likely to involve a discussion more or less far-reaching of the powers of the Union, but the plaintiff could not impose a duty to go into that discussion when before the time for it the resistance had been withdrawn and the job had been done." 281 U.S. at 463-464.

Similarly, since the questions presented in the petition herein do not arise on the facts of the instant case, petitioner

[9] *Muskrat v. U. S.*, 219 U.S. 346 (1911); *United States v. Alaska Steamship Co.*, 253 U.S. 113 (1920).

is likewise disabled and "cannot require" this Court "to go into general propositions or prophetic statements of how it is likely to act" upon such other possible issues that have not arisen. See 281 U.S. at 462-463.

As recently as 1960 this Court has reaffirmed this position, in a case involving a labor dispute. See *Local No. 8-6, Oil, Chemical and Atomic Workers International Union, AFL-CIO v. Missouri*, 361 U.S. 363 (1960); see also *Amalgamated Assoc. of Street Ry. Employees v. Wisconsin Employment Relations Board*, 340 U.S. 416 (1951).

In reaching its decision in *Atomic Workers*, this Court relied upon its decision in *Harris v. Battle*, 348 U.S. 803 (1954). Concerning that case, this Court stated:

> ". . . In this court it was urged that the controversy was not moot because of the continuing threat of state seizure in future labor disputes. [Footnote omitted] *It was argued that the State's abandonment of alleged unconstitutional activity after its objective had been accomplished should not be permitted to forestall decision as to the validity of the statute under which the State had purported to act.* [Footnote omitted] . . . In finding that the controversy was moot, the Court necessarily rejected all of these contentions. 348 U.S. 803. Upon the authority of that decision the same contentions must be rejected in the present case. See also *Parker Co. v. Painters Union*, 281 U.S. 462; *Commercial Cable Co. v. Burleson*, 250 U.S. 360." 361 U.S. at 368-369. [Emphasis added]

In *Battle* therefore, this Court rejected the claim that mere allegations of illegal action prevented the case from becoming moot.

In its complaint, its opposition to the motions to dismiss and in its petition for rehearing CAL Chapter has repeatedly asserted in one form or another the violations of the Railway Labor Act claimed in its petition for certiorari. The similarity between the petition for rehearing below and

the petition for certiorari is striking. CAL Chapter has failed utterly in these attempts to persuade the lower courts that Continental violated the Railway Labor Act in any way. When the court below denied the petition for rehearing, it had already found and stated in its opinion facts which conclusively showed a lawful course of action by Continental, ALPA and the strikers. The evidence and the law support the findings of fact and conclusions of law of the court below, and the decision below is clearly correct. The decisions of this Court and of the courts of appeal cited by petitioner rest upon findings in those cases that *affirmatively established* that the union loss of majority or dissolution was the result of unfair labor practices by the employer. That just is not the situation here and therefore petitioner's cases are not applicable to this case. It would be a fruitless endeavor indeed to grant certiorari in this case in order to attempt to reconcile it with decisions in other cases based on completely different facts. The decision of the court below on the facts found, rather than being in conflict with decisions of this Court or courts of appeal, is, as shown above, entirely consistent with such authorities.

II. Certiorari Should Not be Granted Merely to Review The Findings of Fact by The Court Below Upon Which It Based Its Determination of Mootness.

The Questions Presented as stated by CAL Chapter in its petition are based on certain factual assumptions. Question 1 therein (Pet. 2) is based on Continental's allegedly "bargaining with the individual employees." Question 2 (Pet. 2) is based upon the assumption that the dissolution of CAL Chapter was induced by conduct of Continental violating the Railway Labor Act. Without such factual bases petitioner's case evaporates.

As above set forth the findings of fact of the court below conflict with CAL Chapter's view of the facts. Moreover these findings expressly negative any assertion of individual bargaining and set forth an entirely legal course of conduct. The record is indeed devoid of any evidence of illegal

conduct of Continental inducing the dissolution of CAL Chapter and, moreover, Berry's affidavits particularly show the lack of any causal connection between dissolution of CAL Chapter and conduct by Continental.

CAL Chapter's basic legal theory is that an employer cannot be allowed to profit from its own unfair labor practices. To arrive at the application of its legal theory CAL Chapter attempts to create a different case, factually, from the one before this Court. In effect it is asking this Court to review the findings of fact by the court below and to hold such findings erroneous so that its legal theory will have some force. If the findings of fact by the court below are sustained, CAL Chapter's legal theory is not applicable in any way.

In reaching its determination of the operative facts of this case the court below reviewed all of the affidavits and documentary evidence. It construed the strike settlement agreement of October 10, 1960, as well as the option forms signed by all strikers. It examined and reached conclusions concerning the minutes of the dissolution meeting of CAL Chapter. It examined and construed the constitutions and by-laws of CAL Chapter and International. It reviewed the efforts of International to impose a trusteeship on CAL Chapter and held such activity to be fruitless and ineffective. It determined from the affidavits and exhibits the course of events leading up to the settlement (Pet. App. A, 23). It carefully avoided deciding disputed fact questions (Pet. App. A, 23, 24, 25).

Petitioner argues that the court below would not heed its argument that the case could not be moot because, according to petitioner, the mootness was induced or caused by illegal conduct of Continental and ALPA. The court below certainly heard this argument because it was made with much force in CAL Chapter's opposition to the motions to dismiss and petition for rehearing. However the court below necessarily rejected this argument because it was baseless. The

operative facts, as set forth above and in the opinion of the court below, simply do not and will not support petitioner's argument.

In view of this posture of the case it is evident that a writ of certiorari should not issue. This Court has repeatedly declined to grant certiorari to review the findings of fact of the court below.[10]

III. There is No Important Question of Federal Law.

The underlying issues giving rise to the dispute in this case arise from the economic, operational problem of working out the flight crew complement on jet aircraft. The specific issue before this Court is whether to review the determination of the court below that CAL Chapter's suit against Continental and ALPA is moot. That decision is based entirely on the facts of this case and, as shown above, has no broader implications.

The decision of the court below reveals the absence of any novel applications of the Railway Labor Act. It is clear that no provision of the Railway Labor Act prohibits a group of strikers from abandoning their own union and turning to another to get their strike settled and in fact to settle the entire dispute. The federal agency concerned with representation disputes under the Railway Labor Act was fully informed and expressed no objections. Moreover CAL Chapter failed to invoke the services of the National Mediation Board to establish representation rights after Continental had notified it and the Board that Continental no longer recognized CAL Chapter as the bargaining agent for flight engineers. Negotiating between themselves first, the strikers and ALPA reached a tentative strike settlement agreement satisfactory to them. The strikers authorized ALPA

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[10] *General Talking Pictures Corp. v. Western Electric Co.*, 304 U.S. 175 (1938); *United States v. Johnson*, 268 U.S. 220 (1925); *New York Cent. & H. RR. Co. v. Kinney*, 260 U.S. 340 (1922); *Southern Power Co. v. North Carolina Public Service Co.*, 263 U.S. 508 (1924); *Houston Oil Co. v. Goodrich*, 245 U.S. 440 (1918); See, Robertson & Kirkham, *Jurisdiction of The Supreme Court of The United States* (Wolfson & Kurland ed. 1951) ¶¶ 310, 333.

(as recited in the settlement agreement) to act for them for all purposes of that agreement. ALPA then presented the agreement to Continental. Continental, recognizing that ALPA represented the strikers as well as its pilots, negotiated with ALPA and signed the agreement settling the strike.

Petitioner cites cases of public rights and public interest. Those cases for the most part are cases in which the United States, the NLRB or some other agency are parties to the litigation. Those cases also are ones in which there were specific findings that a party had actually violated a federal law. In those cases there were injunctions or NLRB cease and desist orders which of their very nature do not become moot merely because a party ceases its unlawful activities. Such decrees and orders operate prospectively and continuously. In those cases involving unions as parties there was at least either a shell or viable entity to receive the benefit of the order; or the Government or an agency was engaged in the course of its statutory duty of enforcing and vindicating a federal law. None of these situations exist here.

Indeed the absence of such elements in the instant case is apparent. Here no violations have ever been found regardless of the frequency with which they have been asserted, nor would the facts, as found, support such a conclusion. Hence there is no public right to be vindicated. Here neither the United States nor any agency is a party. Indeed there is no party plaintiff in existence and that fact is admitted by petitioner for the purposes of the petition for certiorari. Here there is no continuing prospective decree or order of any court or agency. Rather, here there is a complete settlement of a dispute involving twenty-two men and a now nonexistent association of which they comprised the entire membership, and, notwithstanding the settlement, a third party (International) with no interest or standing is attempting to keep the lawsuit alive.

As respondent has shown above, the operative facts, as found by the court below, do not and will not support petitioner's allegations. The lower court found the facts to be quite different from those alleged by petitioner, and based on its findings necessarily refused to accept petitioner's allegation of violations of the Railway Labor Act. In such circumstances, it is evident that petitioner relies upon authority which has no application to the present case and that no public interest is involved. In reality, it is merely asking this Court to re-examine the findings of fact of the court below, for only by reversing numerous of those findings (which this Court would have to find were clearly erroneous) could this Court apply petitioner's legal theory of the case in order to reverse.[11] The lower court having found that events pending appeal had rendered the case moot and having necessarily rejected petitioner's assertions that these results were attributable to respondent's violation of the Railway Labor Act as unsupported on the undisputed facts of record, it properly held the case to be moot and properly entered its order of dismissal. Since its decision was upon the particular facts before it, and therefore does not involve either erroneous or conflicting application of the decisions of this Court or other courts of appeal or present issues of major importance in the administration of the Railway Labor Act, this case is not one in which a writ of certiorari should issue.

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[11] If certiorari should be granted, Continental will argue that the findings of fact of the court below, not being clearly erroneous, must be sustained and that those findings fail to support petitioner's allegations that this case reached its present posture because of Continental's alleged violations of the Railway Labor Act. Moreover respondent will maintain that since these facts will not support petitioner's allegations of Railway Labor Act Violations, the case *does not* involve matters of public interest which would permit its survival after all parties having any interest in the subject matter of the litigation have settled the dispute.

CONCLUSION

For the reasons stated above, it is therefore respectfully submitted that this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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